

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Number Resource Optimization)	
)	
Qwest Communications Corporation, on)	CC Docket No. 99-200
Behalf of its IP-Enabled Service Operations,)	
Petition for Limited Waiver of Section)	
52.15(g)(2)(i) of the Commission's Rules)	
Regarding Numbering Resources)	

**QWEST COMMUNICATIONS CORPORATION,
ON BEHALF OF ITS IP-ENABLED SERVICES OPERATIONS,
REPLY TO COMMENTS REGARDING ITS PETITION FOR LIMITED WAIVER**

I. NO COMMENTING PARTY PRESENTS A *BONA FIDE* REASON TO DENY QWEST'S REQUEST FOR A LIMITED WAIVER OF EXISTING NUMBERING RULES OR SHOWS THAT QWEST IS NOT SIMILARLY SITUATED TO SBCIS.

Qwest Communications Corporation ("QCC"), on behalf of its IP-Enabled Services operations ("QCC/IPES"), filed a Petition for a Limited Waiver of the Federal Communications Commission's ("Commission") numbering rules, specifically Section 52.15(g)(2)(i), on March 29, 2005. Subsequently, the Commission put the Petition out for Public Notice¹ and comments were filed regarding the QCC/IPES Petition. None of the filed comments provides a basis for denying QCC/IPES' Petition. For this reason, the Commission should proceed to grant the Petition.

¹ See Public Notice, *Wireline Competition Bureau Seeks Comment on Qwest Communications Corporation Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources* (rel. May 4, 2005).

Of the filed comments, some can be characterized as “general comments” regarding the propriety of issuing any kind of waiver (or additional waivers) to providers of IP-enabled services similar to those offered by SBC Internet Services (“SBCIS”).² Others ask the Commission to rule on matters in the context of the QCC/IPES Petition that were not before the Commission when it ruled on the SBCIS waiver petition, are not properly proffered or addressed in the context of the type of “me-too” waiver that QCC/IPES is seeking and are not sound as a matter of law or policy.³ Still other commentators misread the text of the QCC/IPES Petition and urge the Commission to clarify obligations of those seeking me-too waivers as if QCC/IPES had not already committed to comply with the stated obligations.⁴

All told, then, no commenting party provides a basis for denying QCC/IPES’ limited waiver Petition; and QCC/IPES has met the criteria for having such a waiver granted. The Wireline Competition Bureau (“Bureau”) should follow the Commission’s missive and grant QCC/IPES a waiver since QCC/IPES has demonstrated that it is similarly situated to SBCIS and it has agreed to abide by the conditions the Commission imposed on SBCIS.⁵

² See Comments of the Iowa Utilities Board (“IUB”), filed herein on June 3, 2005, at 2 (noting that the IUB did not support the waiver filed by SBCIS) and *passim*.

³ See Comments of the Association of Directory Publishers (“ADP”), filed herein on June 6, 2005 *passim*. Contrary to the assertions of ADP, unless IP-enabled providers are deemed to be carriers, discussions of “Subscriber List Information” (or “SLI”) – a term borne of the 1996 Telecommunications Act – are not relevant or salient. No IP-enabled service provider has an obligation to provide directory publishers or other carriers with the name, address, and telephone number of their customers.

⁴ See Comments of Verizon, filed herein on June 6, 2005, at 2-3. *And see* note 12, *infra*.

⁵ See *In the Matter of Administration of the North American Numbering Plan*, CC Docket No. 99-200, Order, 20 FCC Rcd 2957 (2005) (“SBCIS Numbering Waiver Order”).

II. QCC/IPES' WAIVER PETITION SHOULD BE GRANTED SINCE IT IS SIMILARLY SITUATED TO SBCIS AND HAS AGREED TO BE BOUND BY THE SAME TERMS AND CONDITIONS AS SBCIS.

A. No Party Has Shown That QCC/IPES Is Not Similarly-Situated To SBCIS.

Like SBCIS, QCC/IPES intends to use these numbering resources in deploying IP-enabled services, including Voice over Internet Protocol (“VoIP”) services, on a commercial basis to residential, governmental, educational and business customers. QCC/IPES has demonstrated that it, like SBCIS, should be permitted to obtain numbering resources directly from the North American Numbering Plan Administrator (“NANPA”) and/or the Pooling Administrator (“PA”). And like SBCIS, QCC/IPES requested that its limited waiver be extended until such time as the Commission adopts final numbering rules either through the North American Numbering Council (or “NANC”) or in the *IP-Enabled Services* proceeding.⁶

Just as the Commission found that good cause existed to grant SBCIS a limited waiver, the same good cause exists to grant QCC/IPES its requested waiver.⁷ Since QCC/IPES' facts and circumstances are not materially distinguishable from those of SBCIS, the Commission should find good cause to grant the QCC/IPES waiver request as consistent with the public interest. Moreover, competitive considerations compel the conclusion that a service provider similarly-situated to SBCIS should have the same access to numbering resources as SBCIS.

⁶ See QCC/IPES Waiver Petition 1-2, 4. And see *In the Matter of IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004) (“*IP-Enabled Services NPRM*”).

⁷ The Commission granted SBCIS a limited waiver of the current number distribution rules in large part to further its goals and objectives with respect to the promotion and advancement of new technologies and innovative services. And in the *SBCIS Numbering Waiver Order*, the Commission stated that it would grant similar authority to those entities seeking similar relief. *SBCIS Numbering Waiver Order*, 20 FCC Rcd at 2959 ¶ 4.

B. QCC/IPES Has Represented Its Intention To Use Numbers It Might Receive In Its Information Services (IP-Enabled) Capacity; And Has Agreed To Be Bound By The Conditions Announced In The SBCIS Numbering Waiver Order.

The Minnesota Independent Coalition (“MIC”) asserts that the Commission should “clarify,” in any Order granting QCC/IPES relief on its Petition, that QCC/IPES “should use any numbering resources obtained through the waiver process only with respect to its IP-enabled service offerings.”⁸ No such clarification is necessary since QCC/IPES already represented that that was how it intended to use any numbers it secured pursuant to the waiver.⁹ Additionally, QCC/IPES disagrees with the MIC that the Commission needs to get into the details of interconnection arrangements and terminating traffic matters before it can grant QCC/IPES its requested waiver.¹⁰ These matters, like many others, are appropriately resolved in the larger *IP-Enabled* proceeding currently pending before the Commission.

Verizon argues that QCC/IPES did not specifically agree to be bound by the Commission-articulated condition pertaining to number portability.¹¹ The significance of Verizon’s observation is – at best – dubious. As Verizon acknowledges, “In its petition,

⁸ MIC Initial Comments, filed herein June 3, 2005, at 2, 6.

⁹ QCC/IPES Waiver Petition at 2 (“QCC/IPES intends to use these numbering resources in deploying IP-enabled services, including Voice over Internet Protocol (‘VoIP’) services, on a commercial basis to residential, governmental, educational and business customers, similarly to the use SBCIS anticipated with respect to the numbers it would receive from NANPA/PA.”). Moreover, as the MIC acknowledges, QCC/IPES criticized the filing of an information service provider seeking a numbering waiver on the grounds that that petitioner did not make clear a similar intention. MIC at 5 & n.8 (citing to the QCC/IPES filing). In any event, Qwest as a local exchange carrier can secure its own numbers, having no need to embark upon a waiver process to secure such numbers. This is additional evidence that QCC/IPES intends to use any numbers it secures through the waiver process for purposes of its IP-Enabled operations.

¹⁰ MIC Initial Comments at 4-5.

¹¹ Comments of Verizon at 2.

QCC/IPES agrees to abide by the conditions imposed on SBCIS[.]”¹² Clearly, agreeing to be bound by all the conditions necessarily includes an agreement to be bound by the specific condition Verizon addresses. Thus, Verizon’s comments present no impediment to the granting of the QCC/IPES Waiver Petition. And there is no reason for the Commission to specifically address this condition in any Order granting QCC/IPES’ request for relief.

SBCIS files with respect to QCC/IPES’ Waiver Petition primarily to argue that any waivers granted by the Commission to IP-enabled service providers should bind those providers by the same terms and conditions imposed on SBCIS.¹³ SBCIS’ comments really have no applicability to the QCC/IPES Waiver Petition in particular since, as stated above, QCC/IPES already agreed to be bound by all the conditions imposed on SBCIS when the Commission granted its waiver petition. Therefore, like the Verizon comments, SBCIS’ filing presents no barrier to the granting of the QCC/IPES Waiver Petition.

¹² *Id.* Verizon is clearly correct since QCC/IPES’ Waiver Petition stated at item Roman numeral II that “QCC/IPES WILL COMPLY WITH THE CONDITIONS INCORPORATED IN THE *SBCIS NUMBERING WAIVER ORDER*” (bold omitted) and later stated that “QCC/IPES agrees to abide by these conditions.” QCC/IPES Waiver Petition at 3, 4 (footnote omitted). QCC/IPES’ text comment comes after it recites two specific conditions the Commission imposed on SBCIS with respect to the granting of its waiver request and might be read in isolation as suggesting that it agreed only to be bound by those two conditions. But the title of that section belies any such reading, as does the fact that soon thereafter in the text QCC/IPES states that “QCC/IPES has agreed to comply with the conditions articulated in the *SBCIS Numbering Waiver Order*[.]” *Id.* at 4. The Commission’s *SBCIS Numbering Waiver Order* makes clear that any petitioner seeking a waiver similar to SBCIS would be required to abide by the same conditions, one of which is number portability. *SBCIS Numbering Waiver Order*, 20 FCC Rcd at 2959 ¶ 4, 2961-62 ¶ 9. The understanding that a petitioner must abide by the stated conditions is a predicate to the filing for relief by any other party. Thus, whether a petitioner “agreed” to the conditions or not is academic. Any “me-too” filing, which QCC/IPES’ filing was, necessarily constitutes an agreement to the recited conditions.

¹³ Comments of SBCIS, filed herein on June 6, 2005, at 1-2 and Appendix A (wherein SBCIS comments that the Commission might want to consider changing certain of its waiver conditions for all filing parties, such as the 30-day notice rule. It also addresses the “facilities-readiness” rule but does not specifically request that it be changed.).

C. There Is No Proof That IP-Enabled Service Providers Will Unreasonably Deplete Numbering Resources.

The comments of IUB are in the nature of concerns over number optimization and conservation rather than a particular demonstration that granting QCC/IPES its requested relief would not be in the public interest. IUB is concerned that, in those rural areas where number pooling does not currently occur, IP-enabled service providers will need to secure blocks of 10,000 numbers, rather than just 1,000 numbers (as is the case in areas where there is pooling).¹⁴

The IUB observation is correct. But the IUB has not demonstrated that IP-enabled service providers will necessarily seek to secure numbers from those rate centers where pooling does not occur or that if they seek them they will do so in such large numbers such that the activity would be material.¹⁵ Absent such evidence, its concerns are speculative. Such unrealized concerns cannot form the basis for denial of a “me-too”-type waiver where the Commission has already expressed its willingness and intention to grant such waivers and the petitioner (here QCC/IPES) is similarly situated to SBCIS (which QCC/IPES is).¹⁶

¹⁴ The IUB cites to the *SBCIS Numbering Waiver Order* at ¶ 9 (20 FCC Rcd at 2961-62; *see* Comments of IUB at 2-3).

¹⁵ Even the IUB notes that “some may question the likelihood of this scenario occurring[.]” Comments of IUB at 3.

¹⁶ Of course, the Commission can consider whether it wants to change the fundamental conditions associated with the *SBCIS Numbering Waiver Order* on its own motion, such that all IP-enabled carriers, including SBCIS, are precluded from obtaining numbers in areas where number pooling does not occur. Prudence suggests, however, that the Commission seek additional comment on this issue first to assess the seriousness and scope of the problem within the immediate future (*i.e.*, before the Commission hears back from the North American Numbering Council on its recommendation in the matter of number assignments to IP-enabled providers).

III. QCC/IPES' WAIVER PETITION MEETS THE STANDARD FOR SECURING A WAIVER GENERALLY AND UNDER THE THE SBCIS NUMBERING WAIVER ORDER.

The Commission may waive its rules for good cause¹⁷ and where strict application of the rule would be contrary to the public interest.¹⁸ In determining whether to grant a waiver, the Commission may consider hardship, equity, or the fact that a more effective implementation of public policy will attend the granting of the waiver.¹⁹ Just as these considerations weighed in favor of granting a limited waiver to SBCIS, so too do they support granting QCC/IPES' instant Petition. No commenting party has demonstrated otherwise.

The Commission has already held that, subject to certain conditions, allowing an entity providing IP-enabled services to secure numbers directly from the NANPA is in the public interest because it promotes efficiency and innovation.²⁰ The Commission has referred to IP-enabled services as “innovative,” “revolutionary” and as having “a profound and beneficial impact on American consumers.”²¹ The Commission has further stated that IP-enabled services have “increased economic productivity and growth” and has recognized that VoIP, in particular,

¹⁷ 47 C.F.R. § 1.3; *see also SBCIS Numbering Waiver Order*, 20 FCC Rcd at 2958-59 ¶ 3, citing to *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (“*WAIT Radio*”).

¹⁸ *SBCIS Numbering Waiver Order* at *id.*; *see also Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”).

¹⁹ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

²⁰ *SBCIS Numbering Waiver Order*, 20 FCC Rcd at 2959 ¶ 4, 2961 ¶ 8. *See also IP-Enabled Services NPRM*, 19 FCC Rcd at 4867 ¶ 5.

²¹ *In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, 19 FCC Rcd 22404, 22431 ¶ 43 (footnote omitted), 22441 (Concurring Statement of Commissioner Michael J. Copps) (2004), *appeal pending sub nom. National Association of State Utility Consumer Advocates, et al. v. FCC*, No. 05-71238 (9th Cir. *pet. for rev.* filed Mar. 5, 2005) (May 11, 2005 joint motion to transfer proceedings to Eighth Circuit Courts of Appeals remains pending).

“will encourage consumers to demand more broadband connections, which will foster the development of more IP-enabled services.”²² Granting QCC/IPES’ Waiver Petition will promote the realization of the Commission’s findings and regulatory objectives. Clearly, then, granting the relief is in the public interest, particularly given the limited nature of the requested relief. Therefore, in furtherance of its long-held desire to afford consumers rapid access to new technologies, and in order to ensure that consumers will have choices within these new service offerings, the Bureau should grant QCC/IPES’ Petition for Limited Waiver on an expedited basis.

IV. CONCLUSION.

For all of the reasons stated herein, QCC/IPES respectfully requests that the Commission expeditiously grant its Petition for Limited Waiver of 47 C.F.R. § 52.15(g)(2)(i) to allow QCC/IPES direct access to numbering resources for purposes of offering IP-enabled services. No commenting party has demonstrated QCC/IPES’ request for relief is at odds with the public interest. In fact, no such showing could be made based on the Commission’s findings in the *SBCIS Numbering Waiver Order* and the specifics of QCC/IPES’ Waiver Petition.

Respectfully submitted,

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²² *IP-Enabled Services NPRM*, 19 FCC Rcd at 4867 ¶ 5.

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **QWEST COMMUNICATIONS CORPORATION, ON BEHALF OF ITS IP-ENABLED SERVICES OPERATIONS, REPLY TO COMMENTS REGARDING ITS PETITION FOR LIMITED WAIVER** to be filed with the FCC via its Electronic Comment Filing System in CC Docket No. 99-200, a copy served via e-mail on Ms. Sheryl Todd of the Telecommunications Access Policy Division, Wireline Competition Bureau, at sheryl.todd@fcc.gov, a copy served via e-mail on the FCC's duplicating contractor, Best Copy and Printing, Inc., at fcc@bcpiweb.com, and a copy served on the parties on the attached service list, via First Class United States mail, postage prepaid.

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